

# SENATE RECORD VOTE ANALYSIS

104th Congress  
2nd Session

Vote No. 258

July 31, 1996, 3:27 pm  
Page S-9241 Temp. Record

## NUCLEAR WASTE/New Legal & Administrative Hurdles

**SUBJECT:** Nuclear Waste Policy Act of 1996 . . . S. 1936. Murkowski motion to table the Bryan amendment No. 5073.

### ACTION: MOTION TO TABLE AGREED TO, 73-27

**SYNOPSIS:** As introduced, S. 1936, the Nuclear Waste Policy Act of 1996, will provide for the interim and permanent storage of spent nuclear fuel and high-level radioactive waste. A short-term facility, administered by the Department of Energy (DOE), will begin accepting nuclear waste no earlier than December 31, 1998 and no later than November 30, 1999, at a site at Yucca Mountain, Nevada. By December 31, 2002, the DOE will apply for authorization to construct a permanent repository at the same site, provided that licensing regulations can be met. Spent fuel and waste from the Federal Government and from commercial nuclear power plants will be transferred from temporary storage sites located in 41 States to the Yucca Mountain site.

**The Bryan amendment** would require the integrated management system that will be implemented by the Secretary of Energy for accepting, transporting, storing, and disposing of spent nuclear fuel and and high-level radioactive waste to comply with all Federal laws and regulations. It would further add that all the requirements of the National Environmental Policy Act (NEPA) would be met in developing and implementing the integrated management system, and that any agency action related to the development or implementation of the integrated management system would be subject to judicial review. (The amendment would require agency review of decisions that have already been made legislatively, such as the decision to consider only Yucca Mountain as a storage site. Effectively, it would require the process to start all over again. Further, it would expand the right to challenge agency actions. Current law only allows challenges of final agency actions.)

Following debate, Senator Murkowski moved to table the Bryan amendment. Generally, those favoring the motion to table opposed the amendment; those opposing the motion to table favored the amendment.

**Those favoring** the motion to table contended:

The Bryan amendment would make it impossible, ever, to build a nuclear repository anywhere. Laws can roughly be divided into

(See other side)

YEAS (73)			NAYS (27)		NOT VOTING (0)	
Republicans (52 or 98%)	Democrats (21 or 45%)		Republicans (1 or 2%)	Democrats (26 or 55%)	Republicans (0)	Democrats (0)
Abraham	Hutchison	Biden	Chafee	Akaka		
Ashcroft	Inhofe	Bingaman		Baucus		
Bennett	Jeffords	Byrd		Boxer		
Bond	Kassebaum	Conrad		Bradley		
Brown	Kempthorne	Dodd		Breaux		
Burns	Kyl	Dorgan		Bryan		
Campbell	Lott	Exon		Bumpers		
Coats	Lugar	Graham		Daschle		
Cochran	Mack	Heflin		Feingold		
Cohen	McCain	Hollings		Feinstein		
Coverdell	McConnell	Inouye		Ford		
Craig	Murkowski	Johnston		Glenn		
D'Amato	Nickles	Kerrey		Harkin		
DeWine	Pressler	Kerry		Kennedy		
Domenici	Roth	Leahy		Kohl		
Faircloth	Santorum	Levin		Lautenberg		
Frahm	Shelby	Mikulski		Lieberman		
Frist	Simpson	Moseley-Braun		Moynihan		
Gorton	Smith	Nunn		Murray		
Gramm	Snowe	Robb		Pell		
Grams	Specter	Simon		Pryor		
Grassley	Stevens			Reid		
Gregg	Thomas			Rockefeller		
Hatch	Thompson			Sarbanes		
Hatfield	Thurmond			Wellstone		
Helms	Warner			Wyden		

#### EXPLANATION OF ABSENCE:

1—Official Buisiness  
2—Necessarily Absent  
3—Illness  
4—Other

#### SYMBOLS:

AY—Announced Yea  
AN—Announced Nay  
PY—Paired Yea  
PN—Paired Nay

general and specific laws. General laws, such as the NEPA, are made to cover situations that Congress did not specifically consider. They provide a framework to follow. Specific laws are made to address particular purposes. As a well-established principle, when there is a conflict between a general law and a specific law, the courts follow the specific law. In this case, we wrote that rule directly into the legislation to prevent court challenges based on general laws. Without that express statement, endless frivolous legal challenges would be made despite the principle in favor of specific laws. Many of the anti-nuclear groups that oppose the building of a permanent nuclear repository are past masters at perverting the legal system with such delaying lawsuits, and they will continue unless we make an express statement in favor of the provisions in this bill.

The Bryan amendment would remove that express statement, it would specifically add that every law and regulation would apply to this repository, and it would add that every agency action in developing and implementing the integrated management system for the repository would be subject to judicial review. This language first ignores that a few of the provisions of this bill conflict with the provisions of some general laws, and that it therefore makes the implementation of this bill impossible. Then it would take the unprecedented step of making all agency actions judicially reviewable. Under the Administrative Procedures Act, only final agency actions, which are major decisions, may be challenged. Under this amendment, everything from a decision to approve the Yucca Mountain site to a decision to buy a cup of coffee could be a subject of a lawsuit.

With that said, it is important to note that this bill has very few conflicts with general laws. The one law which it most seriously conflicts with is the NEPA. The main reason that this law conflicts with the NEPA is that it chooses one alternative--building a repository at Yucca Mountain, Nevada. Congress did not make that decision casually. Yucca Mountain was picked after years of study of alternatives. In picking a disposal site, and method, Congress considered both environmental issues and broader policy issues. It had an extremely wide number of options from which to choose that were totally safe environmentally but which were rejected for other reasons. The waste could have been stored in a granite site in Maine, or in the salt domes in Mississippi, or in a number of other potential sites. Further, instead of storing it in one site, Congress could have decided to drop it in the deep water in the ocean where it would have been buried in mud; it could have detonated it in underground caverns; it could have sent it deep within the earth using bore holes; it could have burned it in liquid light-water reactors; it could have reprocessed it in liquid light-water reactors. All of these options and many other options were carefully weighed and discarded. If the Bryan amendment were to pass, though, they would have to be brought back up again under NEPA, more than 15 years later, reconsidered with blinders on that only allowed the consideration of environmental issues, and every step in considering every alternative would be challengeable in court. The NEPA would cause the same type of problems by requiring consideration of every possible design alternative for the interim and permanent storage facilities, even though the Government has already decided on the best alternative.

All Federal laws and all Federal regulations, including environmental laws and regulations, will apply to the building of this repository except to the extent that they will overturn specific decisions that have already been made. This arrangement is in keeping with the well-established principle that when specific law provisions conflict with general law requirements the specific law provisions are controlling. The Bryan amendment would turn this principle on its head, and at the same time it would expand tremendously the right to challenge agency actions. The effect would be to make it impossible to ever build a nuclear repository. Senators who think it is a good idea to establish two horrendous legal precedents in order to block nuclear waste from ever being stored at a single remote site instead of in dozens of populated sites around the country should vote in favor of the Bryan amendment. If not, they should join us in tabling it.

**Those opposing the motion to table contended:**

The American people understand how dangerous nuclear waste is. They understand that great care should be taken to ensure that it is stored so as not to prevent any danger of harm to health, safety, or the environment. Therefore, we imagine they would be surprised and outraged to know that for the storage of nuclear waste in Nevada this bill will emasculate the environmental laws as they have been developed on a bipartisan basis over the last 25 years. Specifically, the bill states the following: "If the requirements of any Federal, State or local law (including a requirement imposed by regulation or by any other means under such a law) are inconsistent with or duplicative of the requirements of the Atomic Energy Act . . . or of this Act, the Secretary shall comply only with the requirements of the Atomic Energy Act of 1954 or of this Act . . ." The reason for inserting this provision was to preempt environmental laws. This bill declares that all of the high-level, extremely toxic nuclear waste in America is going to be buried at a single site in Nevada, and it sets forth the environmental standards that will have to be met. The normal environmental laws and standards will not apply. Thus, not only is Nevada being forced to take all of the United States' nuclear waste, it is also being forced to take it without the environmental protections that apply to nuclear waste everywhere else. This situation is outrageous, and it is dangerous. The Bryan amendment would make the Government follow all environmental laws. We urge our colleagues not to table this fair, pro-environment amendment.